IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 75 OF 2006

Karmavir Gramin Bigarsheti
Sahakari Pat Sanstha Mydt. .... Applicant
VS.
Smt. Gangubai Paygonda Patil & anr. ... Respondents

Mr. Amit Borkar for applicant.

CORAM: D. G. KARNIK **J.**

DATE: 25th September 2006

P.C.:

1. Heard counsel for the applicant.
2. This revision application is directed against the order dated 28th February 2006 passed by the learned Civil Judge, Junior Division, Kolhapur rejecting the applicant's application for rejection of the plaint, in the suit filed by the respondent no.1, under Order 7 Rule 11 of the Civil Procedure Code.
3. The applicant who is a Cooperative Society advanced certain loan to Babaso Patil and obtained a certificate (hereinafter referred to as the “recovery certificate”) under section 101 of

the Maharashtra Cooperative Societies Act, (for short "the Act") against him. The applicant sought to execute the said certificate against the respondent who is the mother of Babaso Patil. The applicant therefore filed a suit bearing Regular Civil Suit no. 142 of 2005, restraining the applicant from executing the recovery certificate against her and her property. In the suit the applicant filed an application asserting that the suit was not maintainable for want of notice under section 164 of the Act. The applicant prayed that the plaint be rejected. By the order dated 28th February 2006 the learned Judge rejected the application for rejection of the plaint. That order is impugned in this revision.

4. The applicant had never granted any loan to the respondent no.1. The loan was granted to Babaso Patil son of the respondent no.1. Babaso Patil is alive, though absconding. The respondent no.1 in the suit claimed a declaration that the certificate issued against Babaso Patil was not binding on her and should not be executed against her or her property. It is not the business of the applicant to advance loan to or to recover it from non- members or persons not claiming

through the members. In the circumstances the suit preventing recovery was not in respect of anything touching the business of the Society. Hence in my view the learned Civil Judge was right in rejecting the application for rejection of the plaint on the ground that notice under section 164 of the Act was not issued.

5. In the circumstances there is no merit in the Revision application which is hereby dismissed.

(D.G. KARNIK J.)